

ARCHITECTURAL EXAMINING BOARD[193B]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 544A.29, the Architectural Examining Board hereby gives Notice of Intended Action to amend Chapter 6, “Disciplinary Action Against Registrants,” Iowa Administrative Code.

The rules in Chapter 6 describe the disciplinary actions the Board can impose on a licensee.

The proposed amendments are a result of 2017 Iowa Acts, Senate File 408, which requires licensure rather than registration of architects practicing in this state. This bill passed the Iowa Senate on March 28, 2017, 49-0 and passed the Iowa House on April 6, 2017, 96-0; it was signed by then Governor Branstad on May 11, 2017. The proposed amendments change terminology from registered/registration to licensed/licensure.

Consideration will be given to all written suggestions or comments received on or before July 25, 2017. Comments should be directed to Lori SchraderBachar, Iowa Architectural Examining Board, 200 E. Grand Avenue, Suite 350, Des Moines, Iowa 50309. E-mail may be sent to lori.schraderbachar@iowa.gov.

A public hearing will be held on July 25, 2017, at 9 a.m. in the Board Office, 200 E. Grand Avenue, Suite 350, Des Moines, Iowa, at which time persons may present their views on the proposed amendments either orally or in writing. At the hearing, any person who wishes to speak will be asked to give the person’s name and address for the record and to confine remarks to the subject of the proposed amendments.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Board and advise of specific needs.

These proposed amendments were approved by the Board on May 19, 2017.

These amendments are subject to waiver or variance pursuant to 193—Chapter 5.

After analysis and review of this rule making, the Professional Licensing and Regulation Bureau determined that there will be no impact on jobs and no fiscal impact to the state.

These amendments are intended to implement Iowa Code chapter 544A as amended by 2017 Iowa Acts, Senate File 408.

The following amendments are proposed.

ITEM 1. Amend **193B—Chapter 6**, title, as follows:

DISCIPLINARY ACTION AGAINST REGISTRANTS LICENSEES

ITEM 2. Amend rule 193B—6.3(544A,272C) as follows:

193B—6.3(544A,272C) Peer investigative committee. A peer investigative committee may be appointed by the president to investigate a complaint. The committee members will consist of one or more architects, serve at the discretion of the president, and shall have been ~~registered~~ licensed to practice in Iowa for at least five years. The committee will review and determine the facts of the complaint and make a report to the board in a timely manner.

ITEM 3. Amend rule 193B—6.4(544A,272C) as follows:

193B—6.4(544A,272C) Investigation report. Upon completion of the investigation, the investigator(s) shall prepare for the board’s consideration a report containing the position or defense of the ~~registrant~~ licensee to determine what further action is necessary. The board may:

1. No change.
2. Allow the ~~registrant~~ licensee who is the subject of the complaint an opportunity to appear before a committee of the board for an informal discussion regarding the circumstances of the alleged violation.
3. and 4. No change.

ITEM 4. Amend rule 193B—6.5(544A,272C) as follows:

193B—6.5(544A,272C) Informal discussion. If the board considers it advisable, or if requested by the affected ~~registrant~~ licensee, the board may grant the ~~registrant~~ licensee an opportunity to appear before the board or a committee of the board for a voluntary informal discussion of the facts and circumstances of an alleged violation. The ~~registrant~~ licensee may be represented by legal counsel at the informal discussion. The ~~registrant~~ licensee is not required to attend the informal discussion.

Unless disqualification is waived by the ~~registrant~~ licensee, board members who personally investigated a disciplinary complaint are disqualified from making decisions at a later formal hearing. Because board members generally rely upon staff, investigators, auditors, peer review committees, or expert consultants to conduct investigations, the issue rarely arises. An informal discussion, however, is a form of investigation because it is conducted in a question-and-answer format. In order to preserve the ability of all board members to participate in board decision making, ~~registrants~~ licensees who desire to attend an informal discussion must therefore waive their right to seek disqualification of a board member or staff based solely on the board member's or staff's participation in an informal discussion. ~~Registrants~~ Licensees would not be waiving their right to seek disqualification on any other ground. By electing to attend an informal discussion, a ~~registrant~~ licensee accordingly agrees that participating board members or staff are not disqualified from acting as a presiding officer in a later contested case proceeding or from advising the decision maker.

Because an informal discussion constitutes a part of the board's investigation of a pending disciplinary case, the facts discussed at the informal discussion may be considered by the board in the event the matter proceeds to a contested case hearing and those facts are independently introduced into evidence. The board may seek a consent order at the time of the informal discussion. If the parties agree to a consent order, a statement of charges shall be filed simultaneously with the consent order.

ITEM 5. Amend rule 193B—6.6(544A,272C) as follows:

193B—6.6(544A,272C) Decisions. The board shall make findings of fact and conclusions of law and may take one or more of the following actions:

6.6(1) No change.

6.6(2) Revoke the architect's ~~registration~~ license. In the event of a revocation, the ~~registrant~~ licensee shall not be allowed to remain a partner or shareholder of a business entity if the law requires all partners or shareholders of such entity to be ~~registered~~ licensed architects.

6.6(3) Suspend the ~~registrant's registration~~ licensee's license as authorized by law.

6.6(4) Impose civil penalties, the amount which shall be set at the discretion of the board but which shall not exceed \$1000. Civil penalties may be imposed for any of the disciplinary violations specified in Iowa Code sections 544A.13 and 544A.15 and these rules. Factors the board may consider when determining whether to assess civil penalties and the amount to assess include:

a. to k. No change.

l. Whether the ~~registrant~~ licensee acted in bad faith.

m. The extent to which the ~~registrant~~ licensee cooperated with the board.

n. Whether the ~~registrant~~ licensee practiced architecture with a lapsed, inactive, suspended or revoked certificate of ~~registration~~ licensure.

6.6(5) No change.

6.6(6) Require reexamination, using one or more parts of the examination given to architectural ~~registrant~~ licensee candidates.

6.6(7) and 6.6(8) No change.

6.6(9) Issue a consent order.

Voluntary surrender of ~~registration~~ licensure is considered as disciplinary action.